



## FREDERICK COUNTY GOVERNMENT

### OFFICE OF THE COUNTY EXECUTIVE

Jan H. Gardner  
County Executive

Raymond V. Barnes, Jr., Acting Chief Administrative Officer

**TO:** Frederick County Council

**FROM:** County Executive Jan H. Gardner

**DATE:** February 27, 2018

**SUBJECT:** Comments on Bill 17-21: Zoning Text Amendment – Permitted Uses in MXD Zones

Please accept these comments in connection with Council Bill # 17-21, as amended, and scheduled for public hearing on February 27, 2018. As amended, the administration opposes this bill.

Currently Section 1-19-10.500.7(A) of the Zoning Ordinance allows four types of land uses within a Mixed Use Development (MXD): residential, commercial, employment, and institutional. The areas where these land uses will occur are established at the time the MXD floating zone application is reviewed and approved by the Council (Phase I). Employment uses approved on the plan are restricted to those uses allowed within the Office/Research/Industrial (ORI) district, uses that were intended to be supportive of the residential and commercial components of the MXD.

The outcome of Bill #17-21 will permit, in addition to the ORI uses noted above, wholesaling, warehouse, and distribution uses within MXD's. The amended section of the Bill #17-21 provides that wholesaling, warehousing and and/or distribution centers are allowed only where the site is located one mile or more from any land zoned Limited Industrial.

As we stated at the prior public hearing, approval of this bill may change the character of many MXD developments that have already started construction. The owners of the new homes within these MXD's, such as Jefferson Tech Park, purchased their properties based on expectations that the employment areas within the development would be composed primarily of office/research uses and buildings. Office/research uses bring with them certain building types and employment opportunities similar to what are currently permitted in the ORI Zoning Districts. Wholesaling and warehousing, based on the nature of the business, requires a different type of building served largely by truck traffic, outside storage and, in many cases, 24 hour operations. It is unreasonable to allow warehousing and distribution centers in an approved MXD without notification of the MXD residents and the opportunity to fully vet community input through a revised Phase I plan public process.

In addition to the concern noted above, proposed section 1-19-10.500.11 anticipates property owners or developers with an approved Developer Rights and Responsibility Agreements (DRRA) may utilize these new code provisions without amending the DRRA. DRRA's "lock in" the County Codes in effect at the time the DRRA agreement is approved by the County. Since DRRA's freeze

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existing laws, any new or modified laws do not apply to projects with a DRRA. For a development project with a DRRA, the DRRA would need to be amended, through a public process to allow consideration and application of any new laws. The process to amend a DRRA was described in earlier correspondence to the County Council by the County Attorney.

Other concerns that need to be addressed include:

1. **Definitions:** The proposed bill would add “distribution” to the list of employment uses within a MXD. Distribution is not a specified use in the Zoning Ordinance. The County has processed distribution centers under the wholesale/warehouse use category under 1-19-5.310 (Use Table) of the Zoning Ordinance. The term “distribution” should be removed from the bill or further defined.
2. **Non-Conforming Uses:** The amended version of the bill requires that any MXD where wholesaling, warehousing or distribution center has been approved must be more than one mile from the nearest LI zoned property. It is not clear what the purpose of this limitation is. However, the application of this requirement could impact future decisions by the Council. If in the future the Council chose to approve LI zoning for another property within the 1 mile radius, the businesses within the MXD would become “non-conforming”. This would make any future change of use for a wholesaling, warehousing or distribution center within the previously approved MXD problematic. The Council should avoid the criteria of non-conforming uses that limit expansions and changes in use in the future.
3. Past discussion by the Council has suggested that the Planning Commission has the authority to limit the size of a wholesale, warehouse or distribution center as part of the Phase II review process. To clarify, the Planning Commission has no authority to limit the size of a building or use that has been approved for a particular MXD zoning district by the County Council. The Planning Commission can only enforce bulk area requirements such as setbacks, other zoning requirements (such as parking and landscaping), and utility and access issues or other requirements specifically enumerated by the Council at the time of Phase I approval.
4. The Bill provides no guidance regarding what special limitations or design guidelines may be appropriate for a wholesaling/warehousing operation in an MXD. This could include, especially when in proximity to residential areas, special truck routes, hours of operation, lighting, outside storage, building construction type, and so on. These special considerations can only be approved by the Council as part of a Phase I approval process. These considerations cannot be addressed by the Planning Commission unless they are added to the Phase I approval.
5. The Council should consider this discussion within the context of the percentage limitations in the mix of allowed uses with MXD zones.

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Finally, in the Administrations opinion, the assumption that the Office/Research related land uses (as currently permitted in the MXD zone) are not currently marketable at this time is not a reason in and of itself to change the original concept approved for MXD projects approved in the past. Any change in the permitted land uses that deviates from the original approval should take into consideration a broader analysis about impacts on the neighborhood, County Comprehensive plan goals and county land use needs. The Council should take a long term view of the appropriate uses for this property and the expectations of current and future homeowners in the area.

Based on the above comments and considerations, we do not support the bill and would recommend its disapproval by the Council. The issues are numerous. The administration would recommend a Council workshop to better understand and achieve the Council's goals and better address the implications from this proposal such as the creation of non-conforming uses.

cc: Raymond V Barnes, Jr. Acting Chief Administrative Officer  
Ragen Cherney, Chief of Staff, County Council  
John Mathias, County Attorney  
Steve Horn, Director, Division of Planning and Permitting.